

ORIGINAL

September 16, 2005

**DELIVERY VIA COURIER TO MELLON BANK**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, NE, Suite 110  
Washington, DC 20002

RECEIVED

SEP 16 2005

Federal Communications Commission  
Office of Secretary

**Re: MB Docket No. 04-161, RM-10961 and  
RM-11111 (FM Table of Allotments;  
Wilmington, Mount Sterling, Zanesville,  
and Baltimore, Ohio)**


Dear Ms. Dortch:

Transmitted herewith are an original and four copies of a Joint Request for Approval of Universal Settlement Agreement in the above-referenced FM allotment rulemaking proceeding. The proposed Settlement Agreement between Petitioner Vernon R. Baldwin, Inc. and Counterproponent Southeastern Ohio Broadcasting System, Inc., which will eliminate the conflict between their respective reallocation proposals and permit a full resolution of the docketed proceeding, is submitted in accordance with the Commission's Public Notice, DA-05-1688, released June 20, 2005, establishing a ninety-day window for settlement of pending FM allotment rulemaking proceedings.

Please stamp and return the enclosed extra copy of this filing. If there are any questions concerning this matter, please contact the undersigned.

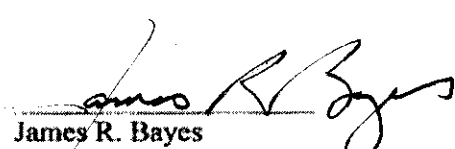
Respectfully submitted,

By:

  
Dennis F. Begley  
of  
Reddy Begley & McCormick, LLP  
1156 15<sup>th</sup> Street, NW  
Suite 610  
Washington, DC 20005  
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Attorneys for Vernon R.  
Baldwin, Inc.

By:

  
James R. Bayes  
of  
Wiley, Rein & Fielding, LLP  
1776 K Street, N.W.  
Washington, DC 20006  
Tel: (202) 719-7000  
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Attorneys for Southeastern Ohio Broadcasting  
System, Inc.

Enclosures

No. of Copies rec'd 0 + 4  
List A B C D E

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

**RECEIVED**

SEP 16 2005

Federal Communications Commission  
Office of Secretary

In the Matter of

Amendment of Section 73.202(b), Table of  
Allotments, FM Broadcast Stations.  
(Wilmington and Mount Sterling, Ohio; Zanesville  
and Baltimore, Ohio)

)  
)  
) MB Docket No. 04-161  
) RM-10961  
) RM-11111  
)  
)  
)

To: The Assistant Chief, Audio Division, Media Bureau

**JOINT REQUEST FOR APPROVAL OF UNIVERSAL SETTLEMENT AGREEMENT**

Vernon R. Baldwin, Inc. ("Baldwin"), licensee of FM broadcast station WKLN, Channel 272A (102.3 mHz), Wilmington, Ohio, and proponent of a proposal to reallocate WKLN from Wilmington to Mount Sterling, Ohio, and Southeastern Ohio Broadcasting System, Inc. ("Southeastern"), licensee of FM broadcast station WHIZ-FM, Channel 273B (102.5 mHz) Zanesville, Ohio and proponent of a counterproposal to reallocate WHIZ-FM from Zanesville to Baltimore, Ohio as a Class B1 station, by their attorneys, hereby respectfully request approval of the universal Settlement Agreement appended as Exhibit 1 hereto.<sup>1</sup>

On August 1, 2003, Baldwin filed with the Commission a petition for rulemaking (the "Baldwin Proposal") to amend the FM Table of Allotments, 47 C.F.R. § 202 (b), to reallocate Channel 272A from Wilmington, Ohio to Mount Sterling, Ohio, and to modify the license to operate Baldwin's FM broadcast station, WKLN, to specify operation on Channel 272A at Mount Sterling, Ohio. The FCC released a Notice of Proposed Rulemaking, DA 04-0178, requesting comments and counterproposals with respect to Baldwin's petition on April 27, 2004.

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<sup>1</sup> This Joint Request is filed in accordance with the Commission's Public Notice, DA 05-1688, released June 20, 2005 ("Window Announced for Universal Settlements of Pending Rulemaking Proceedings to Amend FM Table of Allotments").

In response to the FCC's Notice of Proposed Rulemaking, Southeastern timely filed a Counterproposal (the "Southeastern Counterproposal"), urging that in lieu of the proposed reallocation of Channel 272A to Mount Sterling, the FCC should downgrade Channel 273B to Channel 273B1 and reallocate Channel 273B1 from Zanesville, Ohio to Baltimore, Ohio as that community's first local service. Southeastern further proposed that the Commission modify the license of Southeastern's FM station, WHIZ-FM, to specify operation on Channel 273B1 at Baltimore, Ohio. The FCC accepted the Southeastern Counterproposal and released its Public Notice of Counterproposal in MB Docket No. 04-161, Report No. 2681, on November 12, 2004. No other proposals or counterproposals were filed in this docket.

The Baldwin Proposal and the Southeastern Counterproposal are mutually exclusive in that the proposed reallocation of Channel 272A to Mount Sterling, Ohio is in conflict under the Commission's FM spacing rules with the proposed reallocation of Channel 273B1 to Baltimore, Ohio. The parties believe that the public interest would be served by settling and terminating the conflict between the Baldwin Proposal and the Southeastern Counterproposal in accordance with the procedures announced by the FCC in its June 20, 2005 Public Notice, thereby eliminating the expense and burden to the Parties and to the FCC of further rulemaking proceedings and possible review proceedings thereafter and expediting the introduction of a new local broadcast service licensed to Baltimore, Ohio.

The Settlement Agreement contemplates (1) the dismissal with prejudice of the Baldwin Proposal in return for the consideration specified in the Agreement; (2) the adoption of the Southeastern Counterproposal, *i.e.*, the reallocation of Channel 273 to Baltimore, Ohio as a Class B1 channel and the modification of the license of WHIZ-FM to specify operation on Channel 273B1 at Baltimore, Ohio. The proposed settlement is universal, *i.e.*, it will result in the

disposition of all timely filed proposals and counterproposals, and therefore qualifies under the June 20 Public Notice for waiver of limitations on reimbursement. In support of the Settlement Agreement, Baldwin and Southeastern are submitting as Exhibits 2 and 3 declarations of their respective principals as contemplated by Section 1.420(j) of the Commission's Rules.

Accordingly, Baldwin and Southeastern jointly request that the Commission (1) grant this Joint Request and approve the Settlement Agreement, (2) dismiss the Baldwin Proposal, and (3) adopt the Southeastern Counterproposal to reallocate WHIZ-FM to Baltimore, Ohio as a Class B1 station.

Respectfully submitted,

VERNON R. BALDWIN, INC.

By:



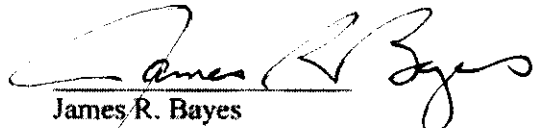
Dennis F. Begley  
of

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1156 15<sup>th</sup> Street, NW  
Suite 610  
Washington, DC 20005  
Tel: (202) 659-5700  
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Its Attorneys

SOUTHEASTERN OHIO BROADCASTING  
SYSTEM, INC.

By:



James R. Bayes  
of

Wiley, Rein & Fielding, LLP  
1776 K Street, N.W.  
Washington, DC 20006  
Tel: (202) 719-7000  
Fax: (202) 719-7049

Its Attorneys

September 16, 2005

# EXHIBIT 1

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made and entered into this 15<sup>th</sup> day of September, 2005, by and between Vernon R. Baldwin, Inc. ("Baldwin"), an Ohio corporation, and Southeastern Ohio Broadcasting System, Inc. ("Southeastern"), an Ohio corporation (collectively, the "Parties").

### **RECITALS**

On August 1, 2003, Baldwin filed with the Federal Communications Commission ("FCC") a petition for rulemaking (the "Baldwin Proposal") to amend the FM Table of Allotments, 47 C.F.R. § 202 (b), to reallocate Channel 272A from Wilmington, Ohio to Mount Sterling, Ohio, and to modify the license to operate Baldwin's FM broadcast station, WKLN, to specify operation on Channel 272A at Mount Sterling, Ohio. The FCC released a Notice of Proposed Rulemaking, DA 04-0178, requesting comments and counterproposals with respect to Baldwin's petition on April 27, 2004.

In response to the FCC's Notice of Proposed Rulemaking, Southeastern timely filed a Counterproposal (the "Southeastern Counterproposal"), urging that in lieu of the proposed reallocation of Channel 272A to Mount Sterling, the FCC should downgrade Channel 273B to Channel 273B1 and reallocate Channel 273B1 from Zanesville, Ohio to Baltimore, Ohio as that community's first local service. Southeastern further proposed that the FCC modify the license of Southeastern's FM station, WHIZ-FM, to specify operation on Channel 273B1 at Baltimore, Ohio. The FCC accepted the Southeastern Counterproposal and released its Public Notice of Counterproposal in MB Docket No. 04-161, Report No. 2681, on November 12, 2004. No other proposals or counterproposals were filed in this docket.

The Baldwin Proposal and the Southeastern Counterproposal are mutually exclusive in that the proposed reallocation of Channel 272A to Mount Sterling, Ohio is in conflict under the FCC's FM spacing rules with the proposed reallocation of Channel 273B1 to Baltimore, Ohio. The Parties believe that the public interest would be served by settling and terminating the conflict between the Baldwin Proposal and the Southeastern Counterproposal in accordance with the procedures announced by the FCC in its Public Notice, DA 05-1688, released June 20, 2005, thereby eliminating the expense and burden to the Parties and to the FCC of further rulemaking proceedings and possible review proceedings thereafter and expediting the introduction of a new local broadcast service licensed to Baltimore, Ohio.

NOW THEREFORE, in consideration of the foregoing and of the terms and conditions set forth below, and with the intention of being legally bound hereby, Baldwin and Southeastern agree as follows:

1. Joint Request: Within three (3) business days of the date hereof, Baldwin and Southeastern shall jointly file a request in writing ("Joint Request") that the FCC do all of the following:

- (a) Approve the terms of this Agreement as set forth herein;
- (b) Subject to the terms of this Agreement, dismiss with prejudice the Baldwin Proposal; and
- (c) Issue a Report and Order (or equivalent written decision of the FCC or its staff) adopting the Southeastern Counterproposal, reallocating Channel 273 to Baltimore, Ohio as a Class B1 channel, and modifying the license of WHIZ-FM to specify operation on Channel 273B1 at Baltimore, Ohio (the "WHIZ-FM Reallocation Order").

Baldwin and Southeastern shall cause the preparation of all documentation needed to properly support the Joint Request. Each party shall fully cooperate with the other and the FCC by expeditiously and completely providing the other or the FCC with any additional information reasonably requested. Baldwin and Southeastern agree that should the FCC find any portion of this Agreement to be unlawful, contrary to public policy or otherwise objectionable, they shall examine the objections of the FCC and timely make individual and joint good faith effort to resolve all objections in a manner which reflects as closely as possible the intentions of the parties as set forth herein, in order to secure FCC approval.

2. Southeastern Modification Application: As soon as practicable following issuance of the WHIZ-FM Reallotment Order, and in any event within the time period specified by the FCC therein, Southeastern shall file with the FCC an application (the "Southeastern Modification Application") for authorization to complete the necessary facilities changes and modify the license of WHIZ-FM to permit operation of the station on Channel 273B1 at Baltimore, Ohio in accordance with the WHIZ-FM Reallotment Order. Southeastern shall prosecute the Southeastern Modification Application diligently and in good faith and shall promptly provide the FCC with any additional information reasonably requested. Each of the Parties agrees that it will take no action adverse to approval of this Agreement, the Joint Request, the dismissal of the Baldwin Proposal, the issuance of the WHIZ-FM Reallotment Order, or the grant of the Southeastern Modification Application.

3. Covenants and Representations by Southeastern: Southeastern agrees that, in exchange for the agreements and covenants of Baldwin herein, it shall pay to Baldwin the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) on the date on which the FCC's approval of this Agreement, dismissal of the Baldwin Proposal, and issuance of the WHIZ-FM



Reallotment Order above become Final, as defined below. To secured said payment Southeastern upon the execution of the Agreement shall place in escrow with a mutually acceptable escrow agent the sum of \$100,000, which sum shall be paid to Baldwin when the WHIZ-FM Reallotment Order becomes Final, as defined below. In addition, Southeastern shall deliver to Baldwin upon finality of the WHIZ-FM Reallotment Order a promissory note in the amount of ONE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS (\$1,650,000) ("Note"). The Note shall be due and payable no later than the earliest of (1) ninety (90) days after the date on which the FCC's grant of the Southeastern Modification Application becomes Final, as defined below; (2) the consummation (following the WHIZ-FM Reallotment Order) of the sale, transfer of control, or assignment of FM station WHIZ-FM by Southeastern to an unaffiliated third party – i.e., a party not controlled by or under common control with Southeastern; or (3) three years after the WHIZ-FM Reallotment Order becomes Final, as defined below. The Note shall be secured by a UCC-1 filing with the Ohio Secretary of State against the assets of Station WHIZ-FM. For purposes of this Agreement, "Final" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or sua sponte action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari, or for the taking of any such sua sponte action by the FCC shall have expired or otherwise terminated.

Southeastern represents and warrants that: (a) it has the requisite power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated herein; (b) the execution and delivery of this Agreement by

Southeastern and the consummation by Southeastern of the transactions contemplated herein have been duly authorized by all necessary action on its part; (c) this Agreement constitutes a valid and binding obligation of Southeastern, enforceable against it in accordance with its terms; and (d) neither the execution, delivery nor performance by Southeastern of this Agreement conflicts with, results in a breach of or constitutes a default or ground for termination under any agreement or judicial or governmental order or decree to which it is a party or by which it is bound.

4. Covenants and Representations by Baldwin: Baldwin agrees that, in exchange for the agreements and covenants of Southeastern herein, it shall cause the dismissal with prejudice of the Baldwin Proposal.

Baldwin, represents and warrants that: (a) it has the requisite power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated herein; (b) the execution and delivery of this Agreement by Baldwin and the consummation by Baldwin of the transactions contemplated herein have been duly authorized by all necessary action on its part; (c) this Agreement constitutes a valid and binding obligation of Baldwin, enforceable against it in accordance with its terms; and (d) neither the execution, delivery nor performance by Baldwin of this Agreement conflicts with, results in a breach of or constitutes a default or ground for termination under any agreement or judicial or governmental order or decree to which it is a party or by which it is bound.

5. Notices: Unless otherwise provided herein, all notices, demands, payments and requests required or permitted by this Agreement must be in writing and shall be deemed to have been given when delivered by hand or by overnight courier, or sent by facsimile transmission; or

on the third day after mailing if mailed by express mail or its equivalent, postage prepaid, return-receipt requested, if available, addressed as stated below:

To Baldwin:                      Vernon R. Baldwin, Inc.  
   Attention: Vernon R. Baldwin, President  
   8686 Michael Lane  
   Fairfield, OH 45014  
   Fax: (513) 829-1560

Copy to (which shall not  
constitute notice):              Dennis F. Begley, Esq.  
   Reddy Begley & McCormick, LLP  
   1156 15<sup>th</sup> Street, NW  
   Suite 610  
   Washington, DC 2005  
   Fax: (202) 659-5711

To Southeastern:                Southeastern Ohio Broadcasting Systems, Inc.  
   Attention: Henry C. Littick, II, President  
   629 Downard Road  
   Zanesville OH 43701  
   Fax: (740) 452-6553

Copy to (which shall not  
constitute notice):              James R. Bayes, Esq.  
   Wiley Rein & Fielding LLP  
   1776 K Street, NW  
   Washington, DC 20006  
   Fax: (202) 719-7049

6.     Integration: This Agreement contains the entire understanding of the Parties with respect to the subject matter, and supersedes all previous oral or written agreements or understandings. This Agreement may be amended only by a written document duly executed by both Parties.

7.     Counterpart Signatures: This Agreement may be executed by the Parties in counterpart with the same effect as if the signatures to all counterpart pages were upon the same copy of the Agreement.

8. Termination: In the event that (1) the FCC has not approved the Joint Request and issued the WHIZ-FM Reallotment Order within eighteen (18) months from the date hereof, or (2) the FCC has issued a decision disapproving or rejecting the Joint Request, and such FCC decision has become Final, as defined in Section 3 above, then either party hereto may, upon written notice to the other party, terminate this agreement without liability and the Parties shall, in that event, return to the status quo ante, provided however, that the party seeking to terminate this Agreement is not in material breach hereof.

9. Construction: This Agreement shall be construed under the laws of the state of Ohio without regard to any choice or conflict of law provision or rule.

10. Specific Performance as a Remedy: Because of the unique nature of the broadcast authorization which is the subject matter of this Agreement, specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal and equitable remedies that may be available under this Agreement. The parties agree that any violation of the covenants contained herein shall constitute irreparable harm. If any party files a lawsuit seeking specific performance of this Agreement, the other party shall waive any defense that an adequate remedy exists at law.

11. Recovery of Costs: If, on account of any alleged breach or default by any party of its obligations under this Agreement, the other party shall take action to enforce its rights hereunder, the prevailing party shall be entitled to recover its reasonable costs incurred in such actions, including, but not limited to, reasonable attorneys' fees and court costs.

12. Assignment: Neither party shall assign any right nor delegate any duty under this Agreement without the prior written consent of the other party, which consent shall not be

unreasonably withheld. This Agreement shall be binding on all successors and assignees of each party hereto

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement, on the date first mentioned above.

VERNON R. BALDWIN, INC.

By: Vernon R. Baldwin

Name: Vernon R. Baldwin

Title: President

SOUTHEASTERN OHIO BROADCASTING SYSTEM, INC.

By: \_\_\_\_\_

Name: Henry C. Littick, II

Title: President

unreasonably withheld. This Agreement shall be binding on all successors and assignees of each party hereto.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement, on the date first mentioned above.

**VERNON R. BALDWIN, INC.**

By: \_\_\_\_\_

Name: Vernon R. Baldwin

Title: President

**SOUTHEASTERN OHIO BROADCASTING SYSTEM, INC.**

By: Henry C. Littick, II

Name: Henry C. Littick, II

Title: President

# **EXHIBIT 2**

## DECLARATION

1. I, Vernon R. Baldwin, President of Vernon R. Baldwin, Inc. ("Baldwin"), hereby certify that except as contemplated in the accompanying Settlement Agreement dated September 15, 2005, neither I nor anyone else representing Baldwin has received or been promised any money or other consideration in connection with the withdrawal of Baldwin's "Petition for Rulemaking" to refile Channel 272A from Wilmington, Ohio to Mount Sterling, Ohio (RM-10961, MM Docket No. 04-161).

2. There are no oral agreements between Baldwin and Southeastern Ohio Broadcasting System, Inc. regarding this matter.

3. I further certify that Baldwin did not file its Petition for Rulemaking for the purpose of reaching a settlement or for purposes of delay.

4. I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

September 15, 2005

*Vernon R. Baldwin*  
Vernon R. Baldwin

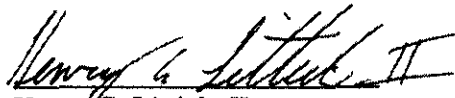


# **EXHIBIT 3**

### DECLARATION

1. I, Henry C. Littick, II, President of Southeastern Ohio Broadcasting, Inc. ("Southeastern"), hereby certify that except as contemplated in the accompanying Settlement Agreement dated September 15, 2005, neither I nor anyone else representing Southeastern has paid or promised to pay any money or other consideration in connection with the withdrawal of Vernon R. Baldwin, Inc.'s "Petition for Rulemaking" to reallocate Channel 272A from Wilmington, Ohio to Mount Sterling, Ohio (RM - 10961, MM Docket No. 04-161).
2. There are no oral agreements between Southeastern and Vernon R. Baldwin, Inc. regarding this matter.
3. I further certify that Southeastern did not file its "Counterproposal" (RM-11111, MM Docket No. 04-161) for the purpose of reaching a settlement or for purposes of delay.
4. I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

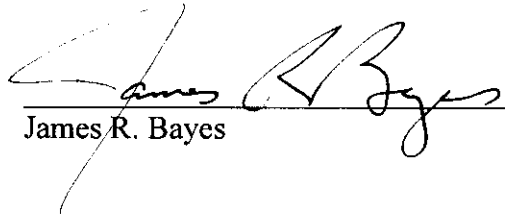
September 15, 2005

  
Henry C. Littick, II

## CERTIFICATE OF SERVICE

I, James R. Bayes, hereby certify that on this 16<sup>th</sup> day of September, 2005, true and correct copies of the foregoing Joint Request for Approval of Universal Settlement Agreement were delivered via electronic mail and deposited in the United States mail, first class postage prepaid, addressed as follows:

Rolanda Faye Smith  
Audio Division  
Media Bureau  
Room 2-B450  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

  
James R. Bayes